
Appeal Decisions

Site visit made on 16 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 December 2016

Appeal Refs: APP/X1355/F/16/3154653 and 3154971

6 Front Street, Staindrop, Darlington, County Durham DL2 3NH

- The appeals are made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr T Fletcher and Mrs J Fletcher against a listed building enforcement notice (LBEN) issued by Durham County Council.
 - The enforcement notice was issued on 2 June 2016.
 - The contravention of listed building control alleged in the notice is: The installation of two, timber, four over four pane sliding sash windows with 24mm double glazed units with applied glazing bars to the principal elevation of the Grade II listed dwellinghouse.
 - The requirements of the notice are:
 - a. Remove the two windows on the principal elevation.
 - b. Replace the two windows with timber weighted sliding sash units, of a two over two pane design as shown on the drawing attached to this notice, to the proportions of the current openings, using traditional fixed structural glazing bars. All timber elements including horns shall be integral to the structure of the windows and not applied additions. The glazing shall be thin profile double glazing units, with a profile no greater than 14mm (The windows shall not include trickle vents).
 - c. The replacement windows shall be painted in a white timber exterior paint.
 - The period for compliance with the requirements is 23 weeks.
 - The appeals were made on grounds (a), (b), (c), (d), (e), (h), (i), (j) and (k) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (see matters of clarification below).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Listed Building Consent (LBC) is refused for the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA). The appeal does succeed to a limited degree on ground (h). See Formal decision below.

Matters of clarification

2. I have set out the grounds of appeal above, as shown on the appeal form. However, apart from the appeal on ground (h) most of the Appellants' arguments relate to the merits of the case (ground (e)), as opposed to the detailed specific grounds. There is no appeal on ground (g) but there is an appeal ground (i). When ground (i) is pleaded, an appeal on grounds (j) and (k) cannot generally be made. Similarly, if Ground (j) is pleaded, grounds (i) and (k) cannot be pleaded and if ground (k) is pleaded then grounds (i) and (j) cannot be pleaded.

3. I realise that the grounds of appeal can be most confusing and I have, therefore, dealt with this appeal on the points set out in the appeal statements and the overall submissions and the facts of the case. It matters not whether the arguments are related to the relevant grounds, but I can assure the Appellants that I have taken

into account everything that they have submitted as part of their overall case in arguing that (for the reasons they set out) the two windows, as installed, should be allowed to remain in place.

Background information

4. The Grade II listed appeal property is a terraced dwelling house located on Front Street, which is the main road through the village of Staindrop. It lies within the Staindrop Conservation Area (SCA). The house was listed on 4 September 1966, together with the adjacent property at No 8. They are described in the listing as, '*2 houses with former shop*' and date back to the late 18th Century. They are constructed in ashlar stone with coursed rubble plinth and stone gable copings with stone and brick chimneys. The list also refers to a bowed shop window with an upper floor French door type window and metal balcony.

5. At the time of listing it would appear that the two appeal windows were modern, timber fixed lights with top-opening sections. These were replaced (with LBC) over 17 years ago when the appellants installed 2 over 2 pane, timber, sash and case windows. These were the ones removed and replaced with the appeal windows. The appellants had approached the LPA in March 2015 with a view to replacing the two windows due to an issue with dampness. In August 2015 the Council's Design and Conservation Officer (DCO) inspected the windows and considered that they could be repaired. Due to their deteriorating condition, the windows were removed and the two appeal windows were installed at the end of December 2015. An application to retain them was submitted to the LPA in February 2016. This was refused LBC.

The appeals on ground (a)

6. An appeal on this ground in essence challenges the listing and is made on the basis that the building (Nos 6 and 8 Front Street Staindrop) is not of special architectural or historic interest. There is nothing in the submissions to convince me that this is the case. Nos 6 and 8 are still recognisable from the list description. The bow window, the upper window with balcony, the hooded stone lintels and the stone detailing are all important architectural and historic elements. Having seen the building in its context with the Staindrop Conservation Area (SCA), I consider that the building is still worthy of its listed status; there can be no justification for removing it from the list and the appeals fail on this first ground.

The appeals on ground (b)

7. To be successful on this ground of appeal it must be conclusively shown that what is alleged to constitute a contravention of section 9(1) or section 9(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA), has not occurred as a matter of fact. However, there is no dispute between the appellants and the Council that this is the case. The windows, the subject of the LBEN, have been installed and I saw them during the course of my site visit. The appeals must also fail, therefore, on ground (b).

The appeals on ground (c)

8. To be successful on this ground of appeal it must be successfully argued that the unauthorised works carried out have not altered the character of the listed building. In a ground (c) appeal the merits of the works are not considered. The question to be asked relates solely to whether or not the character of a listed building has been changed by the works. This is irrespective of whether or not such works have been harmful to the listed building.

9. Having seen the windows from both near and distant viewpoints, I agree with the Council that they have significantly affected the character of the building and that a contravention of listed building control has occurred. The windows are distinctly noticeable with their 4 over 4 pane construction. The proportions have clearly altered the appearance from the previous 2 over 2 pane windows. As a matter of fact and degree, and irrespective of whether the changes have been harmful or not, I consider that the character of the building has been changed. LBC would be required and, as none is in place, it follows that the appeal cannot succeed on ground (c).

The appeals on ground (d)

10. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words '*essential*' and '*urgent*'. The ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case.

11. The appellants had initially contacted the LPA due to a dampness issue relating to the windows and during my site visit the area of dampness to the first floor was still apparaent. It is stated that the windows were rotten and that repair was impracticable. It is considered that the minimum measures necessary meant that the windows needed to be replaced in order to avoid dangerous consequences.

12. However, whilst acknowledging these points, it seems to me that there would have been adequate time between April and December 2015 for the Appellants to liaise with the LPA regarding replacement windows. Although there might have been some health risk (relating to dampness), there is no evidence to suggest that the public were in any danger. Nor is there any evidence that temporary works could not have been put in place whilst a LBC application was made. I do not accept, therefore, that the works were so essential or urgently necessary for health and/or safety reasons. Nor is it obvious to me that the '*minimum measures*' necessary had to involve the immediate removal of the existing windows and their replacement with the new ones. The appeal also fails, therefore, on ground (d).

The appeal on ground (e)

13. In considering whether or not to grant LBC for the windows as installed, the main issues relate to the effects that the windows have had on the character and integrity of the listed building, on its setting and on its features of special architectural and historic interest. Because the building lies within the SCA, I have also paid special attention to the requirements of section 72 of the PLBCAA.

14. The LPA has referred to saved policies of the Teesdale District Local Plan 2002 (TDLP). These are: BENV1, relating to alterations and extensions to listed buildings and BENV4, relating to development within Conservation Areas. The National Planning Policy Framework (NPPF) is a major material consideration and in particular section 12 which seeks to conserve and enhance the historic environment. I have also had regard to national Planning Practice Guidance (PPG) with regard to the protection of heritage assets.

15. Having seen the two windows from both near and distant viewpoints, I share the Council's concerns about their impact on the building and on this part of the SCA.

Due to the way the 4 over 4 pane windows have been constructed they appear as alien and obtrusive features on the face of this fine stone building. The proportions of the panes are completely at odds with the former window pane proportions.

16. Furthermore, although the windows have the appearance of sliding sash window the thick double glazing; applied glazing bars; visible spacers and the light distortion as referred to by the LPA all combine to form a most inappropriate and visually harmful addition to the prominent and noticeable front elevation of the property. I agree with the LPA that the windows have had a most harmful effect on the special architectural and historic features of the building and that they neither preserve nor enhance the character or appearance of the SCA.

17. I find them contrary to policies BENV1 and BENV4 of the TDLP, as well as to policies set out in the NPPF which seek to conserve and enhance our heritage assets. Whilst acknowledging that the harm is less than substantial (see paragraph 134 of the NPPF), the harm caused is not outweighed by any public benefits. Like the LPA, therefore, I do not consider that LBC should be granted for the windows as installed and the appeal also fails on ground (e).

The appeal on ground (i)

18. To be successful on this ground it must be conclusively shown that the steps required by the notice for the purpose of restoring the building to its former state would not serve that purpose. Its former state before the works started was the permitted state for the sash and case 2 over 2 windows. There is no evidence submitted to show that the requirements would not serve their purpose. From the Council's submissions and from my own inspection it is clear that if the requirements are all followed then the character of the listed building would be restored. The appeal fails on this ground.

The appeals on grounds (j) and (k)

19. As indicated above these grounds cannot normally be pleaded if an appeal on ground (i) is made. However, in any case the arguments under these grounds do not directly relate to the steps referred to in grounds (j) and (k). The appeals cannot succeed in relation to these grounds.

The appeals on ground (h)

20. I sympathise with the predicament in which the Appellants now find themselves and can clearly understand why they wished to resolve the dampness problem and to replace rotten windows. However, for the reasons set out above I do not consider that LBC should be granted for their retention. The LPA refused LBC and would not have granted LBC if details had been submitted prior to these windows being fitted. There can be no justification, therefore, in granting LBC at this appeal stage.

21. However, with regard to the compliance period, I agree that 23 weeks falls short of what should reasonably be allowed. In the overall circumstances of these appeals, it is my view that a period of 18 months would be a reasonable period for the necessary liaison with the DCO and the manufacture and installation of the required replacement windows. The appeal succeeds therefore to the limited degree on ground (h) and I will vary the notice accordingly under the powers transferred to me.

Other Matters

22. In reaching my conclusions I have taken into account all other factors put forward in support of the appeal. These include the full planning history; all of the matters set out in the appellants initial grounds of appeal and facts; the alternative windows that have been in position over the years; references to the SCA character

appraisal; other inappropriate window installations within the SCA; the comments on the LPA statement; the fact that neighbours do not object and the final submissions made by the Appellants.

23. However, none of these matters alters my conclusions on any of the grounds of appeal pleaded. Nor is any other factor of such significance so as to change my decision that the appeals should be dismissed.

Formal Decision

24. I direct that that the notice be varied by deleting the number and word '23 weeks' in part 6 of the notice (TIME FOR COMPLIANCE) and substituting therefor the number and word '18 months'.

25. Otherwise, the appeals are dismissed and the Listed Building Enforcement Notice is upheld as varied. Listed Building Consent is refused for the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Anthony J Wharton

Inspector